

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WEYERHAEUSER COMPANY, a  
Washington corporation ,

Plaintiff,

v.

HISCOX DEDICATED CORPORATION  
MEMBER LIMITED as representative  
member of Syndicate 33 at Lloyd's; STARR  
UNDERWRITING AGENTS LIMITED on  
behalf of Lloyd's Syndicate CVS 1919; and  
ALLIANZ UNDERWRITERS INSURANCE  
COMPANY,

Defendants.

No. 2:19-cv-01277-RSL

PLAINTIFF'S FIRST VERIFIED  
AMENDED COMPLAINT

Plaintiff Weyerhaeuser Company, by and through its attorneys, alleges as follows:

**I. INTRODUCTION**

1. This is an action for breach of contract, bad faith, and violations of the Washington Insurance Fair Conduct Act and the Washington Consumer Protection Act arising from the Defendants' failure and refusal to provide owed insurance coverage and benefits.

## II. PARTIES

2. Plaintiff Weyerhaeuser Company (“Weyerhaeuser” or “Plaintiff”) is a corporation organized under the laws of the State of Washington and has its principal place of business in Seattle, Washington. Weyerhaeuser is authorized to do business and is doing business in the State of Washington.

3. Hiscox Dedicated Corporation Member Limited as representative member of Syndicate 33 at Lloyd’s (“Hiscox”) is an unincorporated association organized under the laws of the United Kingdom that, at all relevant times, was engaged in the business of selling insurance policies in the state of Washington.

4. The names of the entities or individuals that subscribe to Lloyd’s Syndicate 33 along with representative member Hiscox and their respective locations is currently unknown to Plaintiff Weyerhaeuser.

5. Starr Underwriting Agents Limited on behalf of Lloyd’s syndicate CVS 1919 (“Starr”), is an unincorporated association organized under the laws of the United Kingdom that, at all relevant times, was engaged in the business of selling insurance policies in the state of Washington.

6. The names of the entities or individuals that subscribe to Lloyd’s Syndicate CVS 1919 along with representative member Starr and their respective locations are currently unknown to Plaintiff Weyerhaeuser.

7. Defendant Allianz Underwriters Insurance Company (“Allianz”) is an insurance company organized under the laws of the State of Illinois that, at all relevant times, was engaged in the business of selling insurance policies within the state of Washington.

8. Hiscox, Starr, and Allianz are collectively referred to herein as “Defendants” or “Insurers.”

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11. **Venue.** Venue is appropriate in this District pursuant to 28 U.S.C. § 1391, as the relevant insurance policies were issued to Weyerhaeuser in this District.

## The Policies

13. Specifically, Defendants Hiscox and Starr are the lead underwriters on policy number BOWCN1600734 and Defendant Allianz issued policy number AUL2007750 (the “Policies”).

1           14.     The Policies are part of a “tower” of excess coverage provided by the Insurers  
2 and other primary and excess insurers not named in this action.

3           15.     The Policies generally follow form to, or incorporate by reference, the terms and  
4 conditions set forth in the underlying lead policy issued by Lex-London (a division of AIG  
5 Europe Limited, and not a party to this action), except to the extent that the terms and conditions  
6 of the excess Policies conflict with the terms and conditions of the underlying coverage. In the  
7 event of such a conflict, the terms of the excess Policies control.

8           16.     Weyerhaeuser timely paid all premiums due and owing under the Policies and  
9 complied with all applicable conditions contained therein.

10                           **Weyerhaeuser’s Claim for Coverage**

11           17.     Weyerhaeuser manufactured and sold TJI Joists coated with a fire retardant  
12 formula called Gen 4 Flak Jacket Protection (the “TJI Joists”), a wood product used in  
13 residential home construction to support flooring.

14           18.     In and around May 2017, Weyerhaeuser started receiving complaints related to  
15 the TJI Joists. Weyerhaeuser subsequently determined that the TJI Joists emitted formaldehyde.  
16 In response, Weyerhaeuser undertook a major remediation program to address the situation.

17           19.     Despite Weyerhaeuser’s efforts, various individuals and entities asserted claims  
18 and initiated proceedings against Weyerhaeuser in relation to its TJI Joists.

19           20.     The Policies provide coverage for the related defense costs and expenses  
20 incurred by Weyerhaeuser.

21           21.     Weyerhaeuser satisfied its \$10 million per-occurrence self-insured retention and  
22 has incurred covered defense costs and liabilities in connection with the TJI Joists that exceed  
23 the applicable coverage limits of the Policies.

24           22.     Weyerhaeuser timely tendered claims to the Insurers on or about July 12, 2019  
25 and repeatedly requested payments of the amounts owed. Weyerhaeuser has also repeatedly

1 updated the Insurers on the status of the underlying claims, including providing at least six  
2 separate updates on the defense and indemnity costs incurred (which included breakdowns of  
3 those costs and supporting invoices and proofs of payment), as well as updates on the status of  
4 settlement efforts with respect to a number of lawsuits filed against Weyerhaeuser.

5 23. Weyerhaeuser's lead first-layer excess carrier, Lex-London, paid Weyerhaeuser  
6 the full amount of its policy limits (\$25 million).

7 24. Despite receiving the claim more than two years ago, satisfaction of the self-  
8 insured retention, and exhaustion of the first layer of coverage, Defendants have not paid the  
9 benefits owed to Weyerhaeuser under the Policies.

10 25. Weyerhaeuser served Allianz, Hiscox and Starr with statutory notice pursuant  
11 to the Washington Insurance Fair Conduct Act, RCW 48.30 *et seq.*, on July 18, 2018. More  
12 than twenty days have elapsed since Weyerhaeuser provided such notice and none of the  
13 Defendants have paid the claim or otherwise cured their breach of the Policies.

14 26. Weyerhaeuser has and will continue to suffer harm as a result of the Defendants'  
15 improper conduct.

16 **The Arbitration Dispute with Hiscox and Starr and**  
17 **Initial Litigation in the Western District of Washington**

18 27. The Policy issued by Hiscox and Starr, through its incorporation of the terms of  
19 the Lex-London policy, contain a "Law of Constriction and Interpretation Endorsement." That  
20 endorsement provides that any dispute arising under the terms of the Policy shall be governed  
21 by the substantive law of Washington.

22 28. The Policy issued by Hiscox and Starr does not require arbitration of coverage  
23 disputes. To the contrary, the Policy issued by Hiscox and Starr indicates that "[i]t is agreed  
24 that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due  
25 hereunder, the Underwriters hereon, at the request of the Insured (or reinsured), will submit to

1 the jurisdiction of a Court of competent jurisdiction within the United States” for purposes of  
2 litigating any such coverage dispute (“U.S. Dispute Clause”).

3 29. Pursuant to the U.S. Dispute Clause and the Policy more generally, Hiscox and  
4 Starr expressly agreed to litigate any coverage disputes in the United States jurisdiction of  
5 Weyerhaeuser’s choosing and further agreed that the terms of the Policy trumped the terms of  
6 the underlying Lex-London policy, including any purported obligation to arbitrate contained  
7 within that underlying policy.

8 30. Despite those policy terms and the obligation to act in good faith imposed by  
9 Washington law, several of Weyerhaeuser’s excess insures took the position that Weyerhaeuser  
10 was obligated to arbitrate its claims in the United Kingdom.

11 31. With regard to Hiscox and Starr specifically, on February 8, 2018 – two months  
12 before Weyerhaeuser filed its initial lawsuit against them on April 20, 2018 – Hiscox and Starr  
13 issued a reservation of rights letter to Weyerhaeuser (“Hiscox/Starr ROR”) expressly asserting  
14 that Weyerhaeuser’s claims were subject to arbitration in London, England. That letter: (1)  
15 took the position that policy issued by Hiscox and Starr followed form “to an underlying  
16 policy”; (2) asserted that the terms and conditions set forth in that underlying policy controlled;  
17 and (3) asserted that the underlying policy “contains an Arbitration Endorsement” that allegedly  
18 “requires arbitration of any dispute, controversy or claim arising out of or relating to this policy  
19 or to the breach . . . or validity of [the] Policy in London . . . .”

20 32. Thus, even though the U.S. Dispute Clause was present in its policy and  
21 indicated that Weyerhaeuser had the right to litigate its claims in the United States, the  
22 Hiscox/Starr ROR ignored that clause and affirmatively asserted on February 8, 2018 that  
23 Weyerhaeuser was instead allegedly obligated to arbitrate any claims it may have against  
24 Hiscox and Starr in London, England.



1           33.     Despite requests from Weyerhaeuser, at no time after February 8, 2018 did  
2     Hiscox or Starr ever reverse course and disclaim the position set forth in the Hiscox/Starr ROR  
3     that Weyerhaeuser's claims against Hiscox and Starr had to be arbitrated in the United  
4     Kingdom.

5           34.     Weyerhaeuser's other excess insurers took similar positions, asserting that  
6     Weyerhaeuser was obligated to arbitrate its claims in London, England, with several of those  
7     insurers taking active steps to irreparably harm Weyerhaeuser's ability to litigate in the forum  
8     of its choosing (Washington State) and enforce the U.S. Dispute Clause.

9           35.     On February 16, 2018, one of those excess insurers, Chubb Bermuda Insurance  
10    Limited ("Chubb"), filed suit in the United Kingdom with intent of depriving Weyerhaeuser  
11    the ability to litigate its claims in Washington State.

12          36.     Specifically, without notice to Weyerhaeuser, Chubb secured an anti-suit  
13    injunction in the United Kingdom that prevented Weyerhaeuser from even attempting to litigate  
14    claims against Chubb in any venue other than via arbitration in the United Kingdom ("First  
15    Anti-Suit Injunction") under the penalty of criminal sanction.

16          37.     The First Anti-Suit Injunction effectively prevented Weyerhaeuser from even  
17    attempting to litigate claims against Chubb in Washington State as a result, immediately and  
18    irrevocably harming Weyerhaeuser by depriving the company of its right to litigate coverage  
19    claims against Chubb in Washington State.

20          38.     Out of the concerns raised by the First Anti-Suit Injunction, Weyerhaeuser  
21    began moving forward with filing a lawsuit to address the issue of arbitrability against Hiscox,  
22    Starr and other insurers on April 20, 2018, subsequently assigned case number 2:18-cv-00585-  
23    JLR and assigned to the Judge Robart ("Initial Federal Litigation").

24          39.     That same day, April 20, 2018, Weyerhaeuser also wrote to Hiscox and Starr  
25    (along with other insurers) and indicated that, while it intended to move forward with the Initial

1 Federal Litigation as a “precautionary measure” to prevent any further anti-suit injunctions,  
2 Weyerhaeuser would voluntarily dismiss any insurer from the Initial Federal Litigation that was  
3 “willing to stipulate” that Weyerhaeuser could litigate its claims in Washington State.

4 40. Allianz stipulated to that agreement, agreeing that jurisdiction and venue were  
5 proper in this Court with regard to any coverage dispute between the parties, and Weyerhaeuser  
6 dismissed it from the Initial Federal Litigation as a result of that stipulation.

7 41. Hiscox and Starr did not stipulate to that agreement.

8 42. The fact that Hiscox and Starr refused to stipulate to the litigation of  
9 Weyerhaeuser’s claims in Washington State raised a reasonable belief that Hiscox and Starr  
10 would maintain the position that they asserted on February 8, 2018 (that Weyerhaeuser was  
11 allegedly obligated to arbitrate its claims against Hiscox and Starr in London, England) and  
12 would act on that position by seeking an anti-suit injunction in the United Kingdom in a method  
13 similar to that employed by other insurers both before and after the filing of the Initial Federal  
14 Litigation on April 20, 2018.

15 43. Given the harm caused to Weyerhaeuser by the First Anti-Suit Injunction and  
16 the immediate additional harm that would occur if additional anti-suit injunctions were filed  
17 against the Company, the Initial Federal Litigation sought a declaration from the court that any  
18 disputes between the parties arising under the policies were not subject to arbitration in the  
19 United Kingdom and instead could be litigated in a U.S. court.

20 44. Despite the pendency of the Initial Federal Litigation and the issue of  
21 arbitrability raised therein, another excess insurer (XL Catlin) whose policy included the same  
22 U.S. Dispute Clause present in the Hiscox and Starr policy subsequently filed suit against  
23 Weyerhaeuser in the United Kingdom to secure an injunction preventing Weyerhaeuser from  
24 litigating any claims in Washington State.  
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1           45.     Specifically, on April 30, 2018, without any notice to Weyerhaeuser and despite  
2 the fact that both XL Catlin and Weyerhaeuser were parties in the then-existing Initial Federal  
3 Litigation, XL Catlin secured a second anti-suit injunction in the United Kingdom that  
4 prevented Weyerhaeuser from even attempting to litigate claims against XL Catlin in any venue  
5 other than via arbitration in the United Kingdom under the penalty of criminal sanction  
6 (“Second Anti-Suit Injunction”).

7           46.     The Second Anti-Suit Injunction effectively prevented Weyerhaeuser from even  
8 attempting to litigate claims against XL Catlin in Washington State as a result, immediately and  
9 irrevocably harming Weyerhaeuser by depriving the company of its ability to litigate coverage  
10 claims or arbitrability issues against XL Catlin in Washington State.

11           47.     Weyerhaeuser was forced to agree to dismiss its litigation in Washington against  
12 XL Catlin as a result of the Second Anti-Suit injunction.

13           48.     As a result of the harm that it suffered as a result of the First Anti-Suit Injunction  
14 and the Second Anti-Suit Injunction, on May 7, 2018, Weyerhaeuser filed a Motion for  
15 Temporary Restraining Order in the Initial Federal Litigation seeking an order enjoining the  
16 remaining excess insurers (including Hiscox and Starr) from “tak[ing] any further action to  
17 enjoin [the] proceedings” before the Court.

18           49.     Recognizing the potential for immediate harm implicated by the actions of  
19 Weyerhaeuser’s insurers, the manner in which it would materially impact Weyerhaeuser’s legal  
20 right to litigate its claims for coverage in Washington State, on May 7, 2018, the Court granted  
21 Weyerhaeuser’s motion, finding that “TRO Defendants may take a similar course of action as  
22 XL Catlin, thus subjecting Weyerhaeuser to immediate, substantial and irreparable harm of  
23 being unable to proceed in its first-filed suit, and being forced to argue its case instead in a  
24 foreign court. Should Weyerhaeuser face injunctions similar to the one obtained by XL Caitlin,  
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1 Weyerhaeuser is placed in a severely prejudicial position” of forfeiting its choice of forum or  
2 facing significant penalties.

3 50. As a result of that finding, the Court entered a Temporary Restraining Order  
4 enjoining the remaining excess insurers that were then named as defendants in the Initial Federal  
5 Litigation (again, including Hiscox and Starr) from “seeking or obtaining, in any other forum,  
6 an injunction against Weyerhaeuser’s instant action.”

7 51. Hiscox and Starr subsequently stipulated to a preliminary injunction barring  
8 them from “instituting or joining in any action, in any other forum, aimed at securing a  
9 determination on the issue whether Weyerhaeuser is required, under the policies issued by the  
10 TRO Defendants, to arbitrate disputes regarding coverage under those policies” that has  
11 remained in place in the Federal Litigation (“Preliminary Injunction”).

12 52. To be clear, the Preliminary Injunction prevented Hiscox and Starr from filing  
13 an anti-suit injunction against Weyerhaeuser in the United Kingdom, the filing of which would  
14 have immediately and irreparably harmed Weyerhaeuser in the same manner set forth above  
15 relative to the First Anti-Suit Injunction and the Second Anti-Suit Injunction by depriving the  
16 company of its ability to litigate coverage and arbitrability claims against Hiscox and Starr in  
17 Washington State.

18 53. As a result of the Preliminary Injunction, Hiscox and Starr have been unable to  
19 file an anti-suit injunction against Weyerhaeuser since May 7, 2018.

20 54. Other insurers within Weyerhaeuser’s tower of excess coverage, however,  
21 continued to do so.

22 55. Specifically, on May 17, 2018, without any notice to Weyerhaeuser, Endurance  
23 Specialty Insurance Limited (“Endurance”) secured a third anti-suit injunction in the United  
24 Kingdom that prevented Weyerhaeuser from even attempting to litigate claims against  
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1 Endurance in any venue other than via arbitration in the United Kingdom under the penalty of  
2 criminal sanction ("Third Anti-Suit Injunction").

3 56. The Third Anti-Suit Injunction effectively prevented Weyerhaeuser from even  
4 attempting to litigate claims against Endurance in Washington State as a result, immediately  
5 and irrevocably harming Weyerhaeuser by depriving the company of its ability to litigate  
6 coverage claims or arbitrability issues against Endurance in Washington State.

7 57. In August of 2018, Weyerhaeuser filed a motion for summary judgment in the  
8 Initial Federal Litigation to resolve the question of whether its claims were subject to arbitration  
9 in the United Kingdom.

10 58. The Court in the Initial Federal Litigation recently indicated that it may lack  
11 jurisdiction to resolve the issues in the Initial Federal Litigation due to concerns with regard to  
12 justiciability, including, but not limited to, the question of whether Weyerhaeuser's claim for  
13 declaratory relief was ripe in the absence of a substantive coverage claim being asserted against  
14 Hiscox and Starr.

15 59. The Court also raised concerns about whether it would have jurisdiction to  
16 maintain the Preliminary Injunction if the case was deemed unripe, raising the possibility that  
17 the Preliminary Injunction could be withdrawn upon such a determination by the Court.

18 60. Specifically, on August 2, 2019, the Court in the Initial Federal Litigation issued  
19 an "Order Scheduling Hearing" in which it asked the parties to address justiciability and  
20 whether a determination that the claim for declaratory relief pled in the Initial Federal Litigation  
21 was unripe required the vacation of "its prior order enjoining Defendants from instituting any  
22 action, in any other forum, aimed at determining whether Weyerhaeuser is required to arbitrate  
23 coverage disputes under Defendants' excess liability policies."

24 61. The withdrawal of the Preliminary Injunction would cause immediate and  
25 irreparable harm to Weyerhaeuser in that Hiscox and Starr would have the ability to secure an

1 anti-suit injunction in the United Kingdom similar to the First Anti-Suit Injunction, the Second  
2 Anti-Suit Injunction, and the Third Anti-Suit Injunction and prevent Weyerhaeuser from even  
3 attempting to litigate claims against Hiscox and Starr in any venue other than via arbitration in  
4 the United Kingdom under the penalty of criminal sanction, immediately and irrevocably  
5 harming Weyerhaeuser by depriving the company of its ability to litigate coverage claims or  
6 arbitrability issues against those defendants in Washington State.

7 62. On August 7, 2019, in order to maintain the status quo and verify whether Hiscox  
8 and Starr intended to seek a similar anti-suit injunction in the United Kingdom if the  
9 Preliminary Injunction were withdrawn, Weyerhaeuser requested that Hiscox and Starr  
10 voluntarily “agree to a permanent injunction similar to Judge Robart’s existing preliminary  
11 injunction order.”

12 63. Hiscox and Starr refused to do so.

13 64. On Friday August 9, 2019, in order to maintain the status quo until such time as  
14 Judge Robart was able to address the justiciability issue, provide Weyerhaeuser with adequate  
15 time to seek an alternative relief to prevent additional anti-suit injunctions if the Preliminary  
16 Injunction were withdrawn by the Court, and to verify whether Hiscox and Starr intended to  
17 seek a similar anti-suit injunction in the United Kingdom if the Preliminary Injunction were  
18 withdrawn, Weyerhaeuser requested that Hiscox and Starr voluntarily agree to a limited, one-  
19 week extension of the Preliminary Injunction.

20 65. Hiscox and Starr refused to do so.

21 66. Hiscox and Starr instead submitted briefing and argument to the Court in the  
22 Initial Federal Litigation indicating that the Court should find that case non-justiciable and  
23 withdraw the Preliminary Injunction.

24 67. As a result of Hiscox’s and Starr’s position that the Initial Federal Litigation was  
25 non-justiciable and their refusal to agree to a limited injunction that would maintain the status

1 quo relative to the Preliminary Injunction for a limited period of time, Weyerhaeuser was forced  
2 to initiate this action in state court the following Monday, August 12, 2019.

3 68. During oral argument before the Court in the Initial Federal Litigation the  
4 following morning – Tuesday, August 13, 2019 – counsel for Weyerhaeuser reiterated the fact  
5 that Hiscox and Starr clearly intended to move for an anti-suit injunction immediately upon the  
6 withdrawal of the Preliminary Injunction and explained to the Court how doing so would  
7 irreparably harm Weyerhaeuser in the manner confirmed by Judge Robart’s May 7, 2018 order  
8 on Weyerhaeuser’s Motion for a Temporary Restraining Order.

9 69. Counsel for Weyerhaeuser also discussed the filing of this action in Superior  
10 Court, expressly indicating to the Court and opposing counsel that Weyerhaeuser intended to  
11 seek a temporary restraining order that afternoon to prevent Hiscox and Starr from seeking to  
12 file a fourth anti-suit injunction if the Preliminary Injunction was withdrawn.

13 70. In order to prevent Weyerhaeuser from securing a temporary restraining order  
14 in Superior Court that afternoon, however, Hiscox and Starr removed this case to federal court  
15 immediately after the hearing before Judge Robart and subsequently filed a motion purporting  
16 to “stay” Weyerhaeuser’s ability seek injunctive relief.

17 71. The totality of these facts – (a) the course of conduct evidenced by other insurers  
18 within the same tower of excess of insurance coverage as Hiscox and Starr via the filing of the  
19 First Anti-Suit Injunction, the Second Anti-Suit Injunction, and the Third Anti-Suit Injunction;  
20 (b) the position expressly asserted in the Hiscox/Starr ROR on February 8, 2018 that  
21 Weyerhaeuser’s claims must be arbitrated in London, England; (c) Hiscox’s and Starr’s refusal  
22 to renounce that position, including failing to respond to Weyerhaeuser’s specific request that  
23 it do so on April 20, 2018 – the same day that Weyerhaeuser filed the Initial Federal Litigation  
24 to stop additional insurers like Hiscox and Starr from filing a fourth anti-suit injunction; (d)  
25 Hiscox’s and Starr’s subsequent position in the Initial Federal Litigation that Weyerhaeuser’s



1 claims were subject to arbitration in the United Kingdom; (e) their repeated refusal to agree to  
2 a limited injunction to maintain the status quo while the Court resolved the issue of justiciability  
3 in the Initial Federal Litigation; and (f) their attempts to deprive Weyerhaeuser of the ability to  
4 secure an alternative injunction in this case in order to maintain the status quo – establishes that  
5 Hiscox and Starr intend to immediately file an anti-suit injunction against Weyerhaeuser upon  
6 the withdrawal of the Preliminary Injunction.

7 72. Allowing Hiscox and Starr to do so would cause immediate and irreparable harm  
8 to Weyerhaeuser by preventing Weyerhaeuser from litigating claims against Hiscox and Starr  
9 in any venue other than via arbitration in the United Kingdom under the penalty of criminal  
10 sanction, immediately and irrevocably harming Weyerhaeuser by depriving the company of its  
11 ability to litigate coverage claims or arbitrability issues against those defendants in Washington  
12 State.

13 **V. FIRST CAUSE OF ACTION**  
14 **BREACH OF CONTRACT**

15 73. Plaintiff incorporates and realleges paragraphs 1 through 72 as if fully set forth  
16 herein.

17 74. Plaintiff incurred covered losses in excess of the limits of the Policies.

18 75. By virtue of the conduct set forth above, by unreasonably interpreting their  
19 Policies, failing to adequately and timely respond, and failing to properly reimburse Plaintiff  
20 for Plaintiff's losses under the terms of the Policies, Defendants breached the obligations set  
21 forth therein.

22 76. As a direct and proximate result of the Defendants' breaches of the Policies,  
23 which is continuing to at least the date of this Amended Complaint, Defendants have deprived  
24 Plaintiff of the benefit of the insurance coverage for which it paid substantial premiums,  
25 damaging Plaintiff in an amount to be proven at trial.



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78. By virtue of the conduct set forth above, Defendants' failure to reasonably investigate, interpret, apply, and honor the terms of their insurance Policies with Plaintiff constitutes violations of Washington's insurance regulations and breach of Defendants' duty of good faith and fair dealing.

80. By virtue of the conduct set forth above, Defendants' failure to reasonably investigate, interpret, apply, and honor the terms of their insurance Policies with Plaintiff constitutes violations of Washington's insurance regulations and breach of Defendants' duty of good faith and fair dealing.

**VIII. FOURTH CAUSE OF ACTION**  
**VIOLATION OF WASHINGTON'S CONSUMER PROTECTION ACT**

83. By virtue of the conduct set forth above, Defendants have breached Washington's insurance regulations, a single violation of which constitutes a *per se* unfair trade practice under the Washington Consumer Protection Act, RCW 19.86, *et seq.*

1           84.     Independent of those duties imposed by Washington's insurance regulations,  
2 Defendants' conduct otherwise constitutes an unfair and/or unlawful practice in trade or  
3 commerce.

4           85.     Plaintiff has suffered injury in its business or property as a result of Defendants'  
5 unfair or unlawful practices. Accordingly, Plaintiff is entitled to damages, treble damages,  
6 prejudgment interest, and attorneys' fees from Defendants.

7                           **IX. FIFTH CAUSE OF ACTION**  
8                           **ATTORNEYS' FEES**

9           86.     Plaintiff repeats and realleges the allegations contained in paragraphs 1 through  
10 85 as if fully set forth herein.

11           87.     Plaintiff, as the insured in a legal action to obtain the benefits under its insurance  
12 policy, is entitled to attorney's fees and costs associated with compelling Defendants to fulfill  
13 their contractual obligations thereunder.

14                           **X. RESERVATION OF RIGHTS—DECLARATORY RELIEF**

15           88.     Should the Western District of Washington dismiss the Initial Federal Litigation  
16 on the grounds that it lacks jurisdiction to adjudicate the issues presently before it,  
17 Weyerhaeuser reserves its right to amend this Amended Complaint to add a cause of action for  
18 declaratory relief relative to the proper venue and arbitrability of this dispute.

19                           **XI. REQUEST FOR RELIEF**

20           Plaintiff requests relief as follows:

- 21           A.     For a judgment declaring that Defendants are obligated to reimburse Plaintiff in  
22 an amount to be proven at trial;  
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- 1 B. For other damages as may be proven at trial, including treble damages for  
2 Defendants' violation of the Insurance Fair Conduct Act and the Consumer  
3 Protection Act;  
4 C. For costs and attorney's fees;  
5 D. For prejudgment interest; and  
6 E. For such other and further relief as the Court may deem just and equitable.  
7

8 DATED this 16<sup>th</sup> day of August, 2019.  
9

10 s/ Michael A. Moore

11 Michael A. Moore, WSBA No. 27047

12 Kelly H. Sheridan, WSBA No. 44746

13 Jocelyn Whiteley, WSBA No. 49780

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22 Attorneys for Plaintiff  
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VERIFICATION

I, Conrad Smucker, declare as follows:

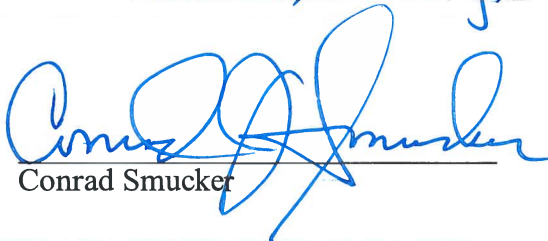
1. I am Chief Competition Counsel for Plaintiff Weyerhaeuser Company ("Weyerhaeuser").

2. I am over the age of 18 and am competent to testify to the below facts.

3. I have personal knowledge of the facts set forth in the foregoing *First Amended Verified Complaint*, and if called upon to testify I could competently testify as to the matters stated herein.

4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *First Amended Verified Complaint* are true and correct to the best of my knowledge.

DATED this 16<sup>th</sup> day of August, 2019 at Seattle, Washington

  
Conrad Smucker

1 CERTIFICATE OF SERVICE

2 I hereby certify that on August 16, 2019, I electronically filed the foregoing with the  
3 Clerk of the Court using the CM/ECF system which will send notification of such filing to the  
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